IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3201 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES Yes

2. To be referred to the Reporter or not? Yes :

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES Yes

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? : NO No

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AMC

Versus

MAHENDRABHAI JAYANTIBHAI SHUKLA

Appearance:

MR HS MUNSHAW for Petitioner

MR HARDIK C RAWAL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 16/06/2000

CAV JUDGEMENT

In the present petition rule has been issued by this Court and granted ad-interim relief in terms of paragraph No. 8 (C) by order dated 30th April 1999.

2. In the present petition the petitioner has challenged the order passed by the Industrial Tribunal, Ahmedabad in Approval Application No. 35 of 1975 dated 31st March 1999 filed by the petitioner, which has been rejected by the Industrial Tribunal, Ahmedabad. Against the said petition the affidavit-in-reply is filed by the Respondent-workman, and affidavit-in-rejoinder is also filed by the respondent-workman.

3. When the matter has been taken up for hearing both the learned advocates requested to this Court to decide the present petition finally, and with the consent of both the learned advocates, matter has been taken up for final hearing on 20th April 2000, but the pronouncement of the decision is kept for today.

4. The brief facts of the present petition is that the respondent workman was working as a Conductor (Badge No. 1235) in Ahmedabad Municipal Transport Service. The allegations against the respondent-workman made by the petitioner Transport is that, on 19th September 1974 the respondent workman was on route No. 20/1 in Bus No. 371 in first shift . At about 8 a.m. near Bhagwatinagar bus stand the bus of the respondent workman was checked by checking staff and it was found that one passenger travelling from Civil to Silver Mills had issued ticket of Rs.0.40, bearing ticket no. 5775 and the said ticket is punched at the down and on up punched at 15 . Another two passengers travelling from Civil To Rajpur Tol Naka ticket No. 5776 and 5777 of Rs. 0.40 were issued, but were not properly punched by respondent workman. Another passenger travelling from Civil to Ambica Mill was issued ticket bearing no. 5778 by the respondent workman of Rs.0.40, which was also not punched properly by the respondent workman. The allegations against the respondent workman is that the four tickets of Rs.0.40 were not properly punched and these four tickets were used by the respondent workman from Maninagar to Civil at the time of going down which was recovered from the passengers and the same were utilised for upward journey. The allegation is that these four tickets were re-issued by respondent workman and he thus committed misconduct of misappropriation of Rs.1.60. On these allegations chargesheet was served to the respondent workman on 20th September 1974 on the basis of the report submitted by the ckecking staff on 19th September 1974. On the spot statement of the respondent workman was obtained by the

ckecking staff, wherein he admitted the fact that these four tickets of Rs.0.40 each has been utilised in trip from Civil to Maninagar, that is upward journey. The default slip of Rs.1.60 was prepared by the checking staff . Reply to the chargesheet was submitted by the respondent workman on 27th September 1974. The respondent workman has submitted that at the time when the bus was checked he has taken the bus from depot just to test break of the bus. He also submitted that his duty time was noted by the controller and also noted the cash with him but the controller forgot to note the closing number of tickets . It is further stated in the reply that before issuing tickets to the passengers at the stand the bus was started with the permission of the controller. He also submitted that the driver has started the bus in a full speed and at points like Rambaug, L.G. Hospital and Picnic House, that is different stages have crossed and he was giving tickets from front side of the bus. When he reached rear side of the bus one passenger demanded six tickets for Sardaben bus stand. He immediately issued tickets of Rs.0.40 to the passenger but he refused to accept Rs.0.40 tickets and demanded the tickets of Rs.0.35. But in the meanwhile the respondent workman issued six tickets duly punched and because of this incident and misunderstanding between one passenger and the respondent workman said tickets were to be retained by the workman. Thereafter when the respondent workman looked at the voucher for writing Rajpur Tolnaka number, he realised that Controller at Maninagar bus stand has written in the voucher only the time and not the closing number of tickets and therefore these six tickets of Rs.0.40 were wrongly shown in closing ticket No. 5781 in place of 5775 and used these tickets for onward journey upto Civil. Respondent workman stated that it was not re-issued by him but because of the mistake which has been occurred at the time when he issued six tickets to a passenger, who refused to accept the same.

5. At Bhagwati bus stand the voucher was examined by the checking staff and they found that these four tickets of Rs.0.40 were re-issued by the respondent workman and they also recovered fare of Rs.1.60 from respondent workman. He also submitted that, at the time of checking he insisted to the checking staff to kindly check the cash for the tickets re-issued by him, but the checking staff refused to accede to his request. Respondent workman has also submitted that there was no dishonest intention to misappropriate the amount but because of the fact that the bus was late and different points/stages were passed and these stages were mixed and therefore

these four tickets of Rs.0.40 were adjusted in the bloc.

6. On submission of the reply by the respondent workman, the departmental inquiry was initiated against him. In the departmental inquiry respondent workman remained present. In response to the questions asked by the Inquiry Officer, the reporter replied that whatever is submitted in the report by him is correct. The respondent workman has not cross-examined the reporter though opportunity was offered to him. In response to the question raised by the Inquiry Officer whether the misconduct alleged in the chargesheet has been admitted by the respondent workman or not, the reply was given by the respondent workman that the reply to the chargesheet given by him is correct. Thereafter the respondent workman was cross examined by the reporter. A question was asked to the respondent workman by the reporter that, when he started from Maninagar at about 7.10 a.m. what was the closing number of Rs.0.40 ticket at 75. Another question asked to him was, after issuing tickets at Maninagar whether he has noted down the numbers with the controller or not ?. Respondent workman said that he has not noted down the number with the controller but he closed the number at Sr.no. 81. The another question asked was at Rajpur Tolnaka what was the number written by him. In reply to it respondent said at Sr.no. 81 he closed the ticket at Rakhial and Sardaben bus stand as well at Civil hospital and at the time of starting from Civil Hospital the closing number of Rs.0.40 was at 81. The bus was checked at Bhagwati stand. The tickets of four passengers of Rs.0.40 bearing No. 5775 to 5778 were issued by him and recovered Rs.1.60 from the passengers. However he admitted that these facts were not informed to the controller. According to the defence of the respondent workman this incident had occurred because of some misunderstanding on the part of the passenger who asked six tickets from Maninagar.

7. Thereafter the Inquiry Officer has submitted the findings and opined that the defence of respondent workman was an after thought and the same was not believed. It was held that the respondent workman was liable for misconduct of dishonesty and misappropriation of Rs.1.60 . The respondent workman submitted his reply to the showcause notice and pointed out that he is having large family and the burden of maintaining the family is upon him. The incident was happened because of some misunderstanding, bona fide mistake on his part, the bus was late, the numbers of the closing tickets were not noted down by the controller at Maninagar at the time of starting point. He also pointed out in the reply to show

cause notice that, in past no such incident has been occurred in his career and considering his defence he requested to the authority that he may not be treated to be dishonest and misappropriated the amounts. The Competent Authority, that is the Transport Manager has passed the order of dismissal on 18th January 1975, dismissing the respondent workman from the service.

8. The petitioner Transport Service has filed Approval Application No. 35/75 under sub section 2 (b) of Section 33 of the I.D. Act before the Industrial Tribunal, Ahmedabad. The Industrial Tribunal has initially rejected the approval application filed by the petitioner Transport Service by order dated 19-8-1975. The said order of Industrial Tribunal is challenged before this Court by the petitioner transport service. At the time of examining the order passed by the Industrial Tribunal in rejecting the approval application of the petitioner transport service, wherein the departmental inquiry which was conducted against the respondent workman was held to be illegal and invalid. The following observations has been made by the Division Bench of this Court as under:-

" 72. To summarise our conclusions on various points dealt with above:

(1) The initial fact finding enquiry may or may not be initiated by or at the instance of the disciplinary authority.

(2) The second notice may or may not be given if the first notice is a composite one.

(3) The notice calling upon the employee to show cause against the proposed punishment should advisedly be the decision of the competent authority, but unless some prejudice is shown, this would not vitiate the enquiry if the punishing competent authority ultimately addressed itself to the entire record and arrives at its conclusions;

(4) The provisions of section 56 (3) of the Corporation Act and the Regulations made thereunder are not in any may repugnant to the provisions of the Standing Orders and both are consistent and are to be given effect to;

(5) There was no valid delegation of his powers by the Transport Manager in favour of any of the authorities who had initiated inquiries or issued the show cause notices, but this does not affect the legality of the enquiries;

(6) The provisions of standing order are by and large mandatory.

(7) It is necessary to extend an opportunity to the management of the Transport undertaking to place before the Tribunal all materials and attempt to convince the Tribunal that the prima facie case for permission or approval under section 33 (1) (b) is there.

73. The result is that all the petitions in the above context are allowed. All the matters will now go back to the Tribunals and the Tribunals will extend an opportunity to the management to establish that punishments inflicted are proper. Rule is, therefore, made absolute in the above terms with no order as to costs. "

9. The Division Bench of this Court has remanded the matter back to the Industrial Tribunal to decide the Approval Application afresh after giving opportunity to the management to establish the punishment inflicted being proper or not. It is further directed to the petitioner transport service to place before the Tribunal all material and attempt to convince the Tribunal that prima facie case for approval under section 33 (2) (b) is there. After remanding the matter by the Division Bench of this Court, the Tribunal has examined merits of the matter. The Tribunal has considered this fact in para-5 that after the matter has been remanded back to the Industrial Tribunal the petitioner transport service has not led any oral evidence before the Tribunal and by Exhibit-16 the oral evidence has been closed by the petitioner transport service. Not only that the petitioner transport service has not produced any past record of respondent workman before the Tribunal. Thereafter respondent workman was examined vide Exhibit-14. The Tribunal has considered the evidence on record and also considered the oral evidence given by the respondent workman. Thus considering the incident occurred in the present matter and in view of the directions given by the Division Bench of this Court, the gravity of misconduct, and past record of the respondent

work; the Industrial Tribunal has come to the conclusion that, after the matter was remanded back to the tribunal the petitioner transport service has not led any oral evidence, not produced any documentary evidence , not produced any past record of the concerned respondent workman and thereby held that prima facie the petitioner transport service has not proved the misconduct against the respondent workman. And, considering all these aspects the Industrial Tribunal rejected the Approval Application of the petitioner transport service by order dated 31-3-1999.

10. Learned advocate Mr. Munshaw appearing on behalf of the Petitioner- Transport Service has submitted that the approval application of the year of 1975 has been decided in the year 1999 and the fact of rejection of approval application by the Industrial Tribunal the respondent workman is entitled to full backwages and reinstatement in service after about 25 years. He also submitted that the Industrial Tribunal has ignored the materials on record which were on record and the documentary evidence available at the initial stage when the Tribunal has come to the conclusion that the departmental inquiry initiated against the respondent work is illegal and invalid. It is submitted that the Tribunal has ignored the materials on record and passed the order coming to the conclusion that the transport service has not produced any oral or documentary evidence and past record of the respondent workman, after remanding back the matter by the Division Bench of this Court. It is thus submitted by the learned advocate that the conclusion of the Industrial Tribunal is erroneous and the same required to be set aside.

11. As against that, learned advocate Mr. Rawal appearing on behalf of the respondent workman has submitted that the Industrial Tribunal has rightly passed the order which does not require any interference by this Court. He submitted that the order passed by the Division Bench of this court has been challenged by some of the workmen because that order was in a group of petitions and the same was challenged before the Apex Court in three Special Leave Petitions filed against the order of the Division Bench of this Court. He also submitted that honourable Apex Court has stayed the order dated 26th December 1995 passed by the Division Bench of this Court. It is further submitted that it was a common order passed in morethan 27 matters by the Division Bench of this Court. He also submitted that most of the employees consisted of conductors and drivers and naturally therefore all of them could not afford to

approach the Apex Court but the fact remains that the common order of this Court was stayed by the Apex Court by order dated 30th September 1996. It is further submitted by Mr. Rawal that there were another four Special Leave Petitions filed by four appellants wherein interim relief was granted and ultimately the Apex Court has passed an order on 11-1-1996 disposing off all the four petitions. The copy of the said order has been produced on record at page-46 along with the reply. The Apex Court has passed the order that " all the four appellants were in service of Ahmedabad Municipal Transport Service. Out of the four appellants, Pravinbhai Ambalal has retired. Appellant Nilamuddin Rahimuddin has resigned. It is stated that so far as Ranabhai Prabhabhai is concerned, he is in service and working as Conductor. According to the learned counsel for the respondent , the record of Mohd. Ayub Abdul Hamid is not traceable. It is stated by learned counsel for the respondent that, despite the pendency of the appeals in this Court, Ranabha Prabhabhai is continuing in service because of the stay order granted by various Courts. That may or may not be the position of Mohd. Ayub Abdul Hamid. Be that as it may, if both the appellants or any one of them is still continuing in service, they shall be permitted to continue til they attain the age of superannuation. On superannuation they shall be entitled to retirement and post retiral benefits according to the rules." The four appeals are accordingly disposed of by the Apex Court. Learned advocate also submitted that, after the matter was remanded back to the Industrial Tribunal, the petitioner transport service has not produced any additional evidence or record and past record of the respondent workman and therefore the Industrial Tribunal has rightly rejected the approval application in absence of oral and documentary evidence. Learned advocate further submitted that in spite of the caveat filed by the respondent workman, the petitioner has obtained ex parte orders from this Court in the present Special Civil Application.

12. It is also submitted by learned advocate Mr. Rawal that, it is clear from the order passed by the Apex Court that in identical situation other employes are continuing on their job, whereas the respondent in the present petition is out of job and therefore the view taken by the Industrial Tribunal is right.

13. Considering the submissions of both the learned advocates, the question is required to be examined, as to whether the Industrial Court was right in rejecting the approval application by order dated 31-3-1999, and

whether the petitioner transport service not produced the documental as well as oral evidence and past record of the respondent workman eventhough the opportunity was given ? Under such circumstances the matter is again required to be remanded back to the Industrial Tribunal with a liberty to the petitioner transport service to prove the misconduct by leading oral as well as documentary evidence against the respondent workman.

14. At this stage both the learned advocates submitted to this Court that, instead of remanding the matter back to the Industrial Court for granting opportunity to the petitioner transport service to lead oral evidence and to produce documentary evidence against the respondent, which will take another some years and in the meanwhile the respondent workman will retire from service. So ultimately after 25 years period the question of remanding back the matter to the Tribunal would have adverse consequences upon both the parties and considering these facts both the advocates jointly requested to this Court to decide the petition finally on merits, as if this Court is exercising powers similar to 11A of the I.D. Act 1947. In short the request of learned advocate is to examine the merits of the matter in respect to the gravity of misconduct and to decide finally whether the punishment imposed by the petitioner transport service to the respondent workman is proper or not. Both the learned advocates relied upon the decision of the Apex Court in case of WORKMEN OF BHARAT FRITZ WERNER (P) LTD. VS. BHARAT FRITZ WERNER (P) LTD & ANOTHER, JT 1990 (1) S.C. 305. The Apex Court observed that " The learned Judges were of the view that the said act of misconduct were not such as to deserve extreme penalty of dismissal and have directed that these workmen should be taken back to duty but with one half of the backwages.The learned Judges considered denial of one half of the backwages to the workmen as a sufficient punishment for the acts of misconduct committed by them. The aforesaid directions have been given by the High Court while exercising the powers which are exercised by the industrial tribunal in view of the joint memo dated June 22, 1984 submitted by both the parties, whereby it was requested that the court may decide the entire matter without remitting it to the Tribunal and grant appropriate relief finally in accordance with law. Moreover, in view of the provisions contained in Section 11-A of the Act, which empowers the industrial tribunal to go into the question whether the order of discharge or dismissal passed against a workman is justified or not and permits the tribunal to set aside the order of discharge or dismissal as the circumstances of the case

may require, it was open to the High Court to consider what would be adequate punishment for the misconduct found to have been committed by these workmen and take the view that the acts of misconduct found proved against these five workmen were not such as to warrant dismissal and denial of one half of the back wages for the period of about six years was adequate punishment for the misconduct found to have been committed. We do not find any infirmity in the aforesaid view expressed by the Appellate Bench of the High Court. "

15. Both the learned advocates have relied upon the observations made by the Apex Court in above referred cases. The request of both the advocates is that, in the present case the allegations against the respondent workman is that he re-issued the four tickets of Rs.0.40 which comes to Rs.1.60 and in absence of past record whether the punishment of dismissal imposed by the Transport Manager is justified or not looking to the merits of the matter. Considering the request of both the advocates I am examining merits of the matter, considering the departmental inquiry produced before this Court and also considering the defence of respondent workman . It was pointed out in reply of respondent workman that it was a bona fide mistake on his part. He admitted that at Maninagar stand one passenger has asked for six tickets upto Sardaben stand and by mistake he issued six tickets of Rs.0.40 instead of Rs.0.35 from Maninagar to Sardaben stand. This mistake has been occurred because of bona fide misunderstanding between the passenger and respondent workman. The bus at the initial stage started late and because of that the driver drove the vehicle speedily. Because of this at different stages the number of tickets were mixed and were adjusted in the block which were already issued. In fact the said tickets has been used first time from Civil hospital and this reissuance of the tickets have been considered to be a misconduct and misappropriation of the amount. Considering the defence of the respondent workman that this incident has been occurred because of bona fide misunderstanding between one passenger and respondent workman. In the inquiry he admitted the fact but not admitted the misconduct. However at the time of passing dismissal order the past record of the respondent workman has not been considered, and the reply of the workman has not been believed by the petitioner authority. The respondent workman also replied to the show cause notice, wherein same defence was again put forward by him and he specifically mentioned that he has not admitted the charge. He admitted the fact that there is wast difference between admission of guilt and admission of

fact. Considering the defence of respondent workman in the reply of chargesheet and in reply of show cause notice and considering the reply given by the respondent workman in departmental inquiry; in my opinion, the respondent workman has admitted the fact but not admitted the charge of re-issuing the four tickets of Rs.0.40 and misappropriation of Rs.1.60. Therefore considering the allegations, gravity of misconduct, defence of respondent workman in reply to charge sheet and reply to show cause notice and the replies to the questions given during cross examination in departmental inquiry; according to my opinion, though the mistake has been committed by respondent workman in not properly issuing tickets to the passengers at the time when passengers asked tickets at Maninagar stand, this incident has occurred. So, at the most respondent workman is liable for misconduct of "Negligence" but not in respect to the misconduct of " dishonesty and misappropriation" . Because at the time of checking though a request was made by the respondent to check the cash also, the checking staff did not check, which is necessary when specific allegation of re-issuing the tickets has been made, the natural result of such re-issuance of tickets must be found excess in the cash. This is very important evidence and this has not been taken in to account by the checking staff at the time of checking. There is nothing against the respondent workman in past and no past record has been produced . Considering the observations made by the Division Bench of this Court that the opportunity was given to the petitioner transport service to place all materials and attempt to convince the Industrial Tribunal for prima facie case against the respondent workman, nothing has been produced by the petitioner before the Tribunal. No past record was produced by the petitioner transport service before the Tribunal and even before this Court also. Therefore considering all these aspects, in my opinion, the punishment of dismissal in respect to the proved misconduct is harsh, unjustified and arbitrary.

16. Before finally coming to the conclusion, it is necessary to have considered some relevant facts in respect to the nature of work performed by the Conductor in almost all cases wherein similar type of allegations were made.

(a) In this case, the misconduct for which the extreme punishment visited the worker is causing a very negligible loss to the employer. A serious question that arise in such cases would be , besides the legality of the punishment, the morality of imposing such a severe punishment as well. While imposing a punishment the

employer should first consider whether the delinquent committed the offence with intent to make unlawful gain and to pilfer the revenue of the employer. Was it with intention to gain Rs.1.60 that the worker committed the present misconduct ? Was he in such a depraved circumstance that he desired to make an illegal gain of a trivial amount of Rs.1.60 ? What was the number of passengers travelling in the bus and is it possible that he would have accidently omitted to issue tickets ? Is it not possible that while he was in the process of issuing tickets, the two persons might have boarded the bus ? Several cases we come across, such omission takes place in buses loaded with more than the permitted number of passengers. Such may be cases of human error committed by the Conductor while issuing tickets to passengers travelling in a bus with passengers much more than the permitted number. The disciplinary authority should keep in mind all facts of the problem before it awards the extreme penalty of dismissal.

(b) A misconduct like the above on several instances is not committed intentionally. It is too much to imagine that a worker would have omitted to issue tickets deliberately to gain few rupees at the risk of his job. More often, it is due to the crowd in the bus that he misses to issue tickets to than a desire by him to gain few rupees. The catastrophe that may befall is more serious than what is sought to be prevented. First it visits the employee. He is rendered jobless. It generates a litigation which in the present pattern spreads over years producing ultimately a disgrunted employee. Actually the real victim of any such punishment is the family of the worker whose bread winner is jobless. The future is rendered bleak to them and it in its turn causes greater hardship to the society than it intended to cure.

(c) That apart, the management also shares the losses in another way. When the worker is dismissed, someone else will have to be placed in his place to discharge the duties. And if the worker is ordered to be reinstated ultimately with back wages, virtually there will be double payment, i.e. two persons, would have to be paid for a single job. In the case of a public sector undertaking, the loss is passed on to the common man, the tax payer.

(d) The question then would be in the case of a Conductor (as in the instant case) who has a past history, should the employe ignore the same ? This is a case, the remedy for which the employer himself should

discover and the solution is not far to discover. In the case of a ticketless traveller the management has designed a method to curb the same by imposing fine on them. The object with which this is done is to that he may not repeat travelling in the bus without tickets. This method can certainly be considered of imposing of penalty on the Conductor himself who is discovered to be intentionally pilfering the revenue of the Corporation.

(e) We may notice that in all these cases of non issue of tickets, we may take note of the fact that there are two parties joining to commit the misconduct i.e. the Conductor and the passenger. If the Conductor wants to make an unlawful gain, then he has to collect the fare and fail to issue tickets. In such an event, the passenger who boards the bus must co-operate with the Conductor. If he has to co-operate, then he should be familiar to the Conductor and he should agree to be a party to commit he misconduct at the risk of paying penalty in the vent of being caught bythe inspecting staff. It is too much to imagine that the Conductor will hatch a conspiracy to pilfer revenue of the Corporation as and when stray passengers board the bus at illegal gain by the omission to issue tickets, the passenger has to be condescending party. This is really unlikely. Hence, the benefit of doubt in cases of stray lapses should be that the omission to issue tickets may be accidental.

(f) Hence, the disciplinary authority should reserve the punishment of dismissal only in extreme cases. It is where the exercise of discretion by the disciplinary authority steps in. It cannot and should not act like a robot, its justice should be moulded with humanism and understanding. It should really assess each case on its own merit. The fact that on a past occasion the delinquent might have acted in a particular manner does not mean that on the particular occasion as well he would have acted with intent to cause loss to the employer. Each set of facts should be decided with reference to evidence regarding the said allegations and those allegations should be the basis of the decision. May be, the past conduct of the worker may be a ground to assume that the delinquent may have had propensity to commit the misconduct and to asses the quantum of punishment to be imposed. But that by itself cannot provide any foundation to hold that the present conduct of the worker is a misconduct.

(g) This is not a case in which the past record of the respondent workman is bad. May be the charges with

respect to the above said default would be innocuous or minor. In several cases it may not be the intention of the respondent to commit any misconduct. He might have admitted the guilt as well to avoid protracted proceedings. As can be seen from the record in several cases one or two passengers were not issued with tickets. One cannot say that this was done with the intention of gaining the money involved. If so it would be harsh to take those circumstances as well while moulding the punishment. But it must be stated that in this case that the facts clearly spell out that the worker had been negligent in discharging his duties.

17. Now considering these facts, according to my opinion, the punishment of dismissal is too harsh, unjustified and arbitrary. Thus now the question of relief is required to be considered in the context of the present case. The workman concerned was dismissed from service on 18th January 1975. Almost 25 years have passed now and the workman has remained without job all these 25 years period which is required to be taken in to account. There is another aspect of the matter that the proceedings is pending before the Industrial Tribunal since 25 years. The reason best known to the Tribunal as well as the parties why this matter remained pending after the decision given by the Division Bench of this Court on 26th December 1995 and the Apex Court's final decision on 11th January 1996. There is nothing on record which explain the circumstances of delay occurred in the present matter. One more aspect is required to be considered while deciding this petition. Ahmedabad Municipal Transport Service is a public body and is a State authority within the meaning of Article 12 of the Constitution of India. This proceedings is pending before the Tribunal since last 25 years and the respondent workman is without job for all these 25 years. Considering the allegation of reissuance of four tickets of Rs.0.40, the total amount of which comes to Rs.1.60, and on this allegation the punishment of dismissal imposed by the Transport Service. In view of this fact the observations of the Apex Court in case of H.M.T Ltd Vs. Labour Court, Ernakulam and others, reported in 1994, II GLR, pg. 22, wherein the Apex Court has observed that, we do not find that any error has been committed by the High Court in upholding the award of the Labour Court reinstating the workman. However we find that dismissal of the workman was on July 30, 1979 and till date more than 14 years have elapsed. It is now accepted that no party should suffer on account of the delay in the decision by the Court. Taking all facts into consideration, we are of the view that it would meet

the ends of justice in the present case instead of full back wages to workman concerned is given 60 % of the wages till he is reinstated. Similarly in case of MANAGEMENT OF M.C.D. Vs. PREM CHAND GUPTA AND ANOTHER, AIR 2000, S.C. pg. 454, the Apex Court has observed while granting the relief, wherein a delay of about 33 years in the proceedings pending before the different courts in respect to one subject matter of a workman was concerned. The Apex Court has observed in paragraph - 19 as under:-

" 19. The reason for non-granting full back wages from the date of his termination of 29-4-1966 till actual reinstatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29-4-1966 and after 33 years and more it is being set aside. To saddle the appellant Corporation and its exchequer which is meant for public benefit, with full back wags for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamouring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant Corporation, being a public body with the full back wages for the entire period of respondent workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent workman by the appellant Corporation. It is true that the respondent workman was always willing to work but he could not be permitted to work so long as the termination order stood against him. The labour Court as well as the learned singe Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP stage itself while granting leave stayed reinstatement order on 17-11-1997. Two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant Corporation, a public body, with the burden of entire full back wages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reason is that the

respondent workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete back wages. But keeping in view the fact that for all these long years fortunately the respondent workman had survived and has still two more years to reach the age of superannuation as we are told, not granting him full back wages on the peculiar facts of this case, would meet the ends of justice. "

18. Considering the observations made by the Apex Court in above referred two cases, according to my opinion, the respondent workman has committed the misconduct of remaining negligence in issuing tickets and not properly issuing the tickets to the passengers. The act of dishonesty and misappropriation has been alleged against respondent workman by the petitioner transport service in respect to re-issuance of four tickets of Rs.0.40 which totally comes to Rs.1.60. However the misconduct of dishonesty and misappropriation is not found to be proved, but negligence of respondent workman is found to be proved, as respondent workman has not recovered fares two times from passenger of said four tickets. In first occasion by mistake he had issued the tickets but not given to the passengers, as said passengers demanded tickets of Rs. 0.35. Therefore said tickets were taken back by him and again put punch on tickets in block. The said passengers were issued tickets by workman of Rs.0.35. So in fact said tickets of Rs.0.40 were not used two times as if recovering fares two times by workman. In voucher by mistake he noted the number of said four tickets which created doubt against him that in earlier trip he had used the four tickets. But in absence of traffic / cash such allegations of dishonesty and misappropriation cannot be considered to be proved. It is a clear case of negligence of workman. Therefore punishment of dismissal in such misconduct definitely shocks the conscience of the Court. Recently the Apex Court has decided in case of U.P. STATE ROAD TRANSPORT CORPORATION AND OTHERS V. MAHESH KUMAR MISHRA AND OTHERS, reported in A.I.R. 2000, S.C. 1151, which is in respect of a Conductor. Relevant para Nos. 3, 6, 8, 10 and 11 are quoted as under:-

" 3. On 11-2-1981, while the respondent was on duty on Bus No. UTY 1918. It was checked by the Transport Inspector and 11 passengers were found to have been issued short distance tickets. On

12-2-1981, the Transport Inspector submitted his report which was followed by a preliminary enquiry. A chargesheet was issued to the respondent on 6th June, 1981 on the basis of which a regular departmental enquiry was held under U.P. State Road Transport Corporation Employees (Other Than Officers) Services Regulation, 1981. After enquiry, the services of the respondent were terminated by order dated 29-3-1982. This order was challenged in a departmental appeal filed by the respondent, which was rejected on 4th of April, 1983. The respondent, thereafter, approached the U.P. State Public Services Tribunal (for short, 'the Tribunal') for quashing of the termination order on a number of grounds including that the enquiry was not properly held,but the Tribunal, by its judgment dated 24-1-1994, dismissed the claim petition. This order was challenged by the respondent in a Writ Petition in the Allahabad High Court which, by its judgment dated 12th of February, 1998, partly allowed the writ petition and directed that the respondent shall be reinstated in service but he would be paid 25 per cent of the back wages only. It is against this judgment that the present appeal has been filed.

6. It was in the background of these circumstances that the High Court exercised its discretion under Article 226 of the Constitution and interfered with the quantum of punishment inflicted by the Disciplinary Authority. It may be that the order of dismissal was held to be valid and proper by the U.P. State Public Services Tribunal but the Tribunal also overlooked the fact that though sufficient evidence could have been collected at the spot to indicate that the passengers to whom tickets were issued by the respondent had boarded the Bus at the "High Court" and not at "Zero Road" but this was not done. It was a Bus plied in the City itself and therefore, the passengers, who were available in the Bus, being local passengers, could have been approached at the spot for stating whether they had boarded the Bus at the "High Court" or at "Zero Road". Learned counsel for the appellants has placed reliance upon an unreported decision of this Court in Civil Appeal No. 9754 of 1995, arising out of SLP (C) No. 1960 of 1994 (U.P. State Road Transport Corporation v. Om Prakash Pandey), in which the

order of the High Court, by which interference was made with the punishment inflicted upon the delinquent employee of the Corporation, was set aside. This case is clearly distinguishable on the ground that a number of passengers were allowed to travel without tickets and, therefore, the misconduct imputed to the employee was serious. This is not the case here as the respondent had issued tickets to all the passengers, who were found travelling in the Bus, but the dispute was only with regard to the spot or place at which they had boarded the Bus. To put it differently, the dispute was whether they had boarded the Bus at "Zero Road" or at the "High Court". In these circumstances, the High Court was justified in interfering with the quantum of punishment.

8. This will show that not only this Court but also the High Court can interfere with the punishment inflicted upon the delinquent employee if, that penalty, shocks the conscience of the Court. The law, therefore, is not, as contended by the leaned counsel for the appellants, that the High Court can, in no circumstance, interfere with the quantum of punishment imposed upon a delinquent employee after disciplinary proceedings.

10. As pointed out earlier, the order of the High Court though extremely brief, must have been based on overall consideration of the facts of the case and it must have exercised its jurisdiction only when it was chocked to notice that though all the passengers had been issued tickets, the only dispute was with regard to the point at which they had boarded the Bus for which the punishment of dismissal from service was highly disproportionate.

11. We have already noticed above that instead of charging a fare of Rs. 1.80, the respondent had charged a fare of Rs.1.50 from the passengers. While the appellants maintained that the passengers had boarded the Bus at the "High Court" and were to alight at "Manauri", the respondent contended that the passengers had boarded the Bus at "Zero Road" and were to get down at "Manauri" and, therefore, he had rightly charged Rs.1.50 from those passengers. this fact could have been established beyond doubt if any

of those passengers were examined at the domestic enquiry, or the Transport Inspector, who checked the Bus, could have recorded their statement at the spot. This was not done and the reliance was placed only upon the report of the Transport Inspector which was signed by the respondent also. It was not a case where the passengers were allowed to travel without tickets so that the amount of fare charged fromthe passengers could be pocketed by him. "

19. Therefore considering this aspect some punishment must have to be imposed to the respondent workman and also it is necessary that the public body should not have to be saddled with the liability of full back wages of interim period. Otherwise the burden would be upon the public who are the tax payers. Therefore, according to my opinion, if the reinstatement with continuity of service is granted to the respondent workman and deny 75 % of back wages of interim period, that is from the date of dismissal on 18-1-1975 till the decision of the Industrial Tribunal dated 31-3-1999, will be considered to be a sufficient punishment taking into the fact that a public body should not be saddled with liability of full back wages, the burden of which ultimately fall upon the tax payers. Therefore on both the counts, that is penalty for misconduct of negligence committed by respondent workman and considering the fact that a public body should not be saddled with full back wages, I am denying 75 % back wages to the respondent workman from the date of dismissal on 18-1-1975 till 31-3-1999. I am directing that the respondent workman is entitled to get 25 % back wages of interim period from the date of dismissal i.e. 18-1-1975 till the date of order passed by the Industrial Tribunal dated 31-3-1999. Therefore the order passed by the Industrial Tribunal in Approval Application No. 35/75 dated 31-3-1999 is required to be quashed and set aside and the same is hereby quashed and set aside, with a direction to the petitioner transport service to reinstate the respondent workman in service with continuity of service and with 25 % back wages of interim period from the date of dismissal on 18-1-1975 till the date of order passed by the Industrial Tribunal on 31-3-1999. It is further directed to the petitioner to reinstate the respondent workman in service within a period of four weeks from the date of receipt of certified of the present order. It is directed the petitioner Transport Service to pay 25 % back wages to the respondent workman within a period of three months

from the date of receipt of certified copy of the present order. It is also further directed that the respondent workman is entitled to full wages from the date of order passed by the Industrial Tribunal dated 31-3-1999 till the actual reinstatement and the same is required to be paid by the petitioner Transport Service within a period of six weeks from the date of receipt of certified copy of the present order. The petitioner Transport Service to consider the respondent workman in service through out, that is from the date of dismissal till the date of reinstatement and he be deemed to be in service for all purposes of service benefits. Petitioner Transport Service shall have to fix the salary considering the revision of pay which came into effect from time to time during the interim period, and shall fix salary of respondent workman as if he remained in service through out and pay 25 % back wages after such calculation to the respondent workman during the interim period. The respondent workman is also entitled to increments of interim period as if he was in service all through out . Respondent workman is not only entitled to the increments in the fixation of salary but is also entitled to the 25 % back wages. The service of respondent workman is considered to be continuous during the interim period for all purposes and he is also entitled to all the consequential service benefits. Accordingly present petition is partly allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

Dt: 16-06-2000

(H.K. Rathod, J)

/vgn.